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SUBJECT: DRAFT LEGISLATION ON "LAND TAKING" RAISES EYEBROWS  
IN CAMBODIA

¶1. (U) Summary. The Ministry of Economy and Finance (MEF) recently made available a draft expropriations law formalizing procedures for RGC confiscation of land for public projects. At the same time, the MEF, with counsel from an Asian Development Bank (ADB)-sponsored East-West Management Institute (EWMI) consultant, announced it is drafting a subdecree creating procedures to assess the social and economic impacts of land confiscations; they expect the subdecree will be passed by the end of 2007. Both drafts were a surprise to the NGO community which decries the legislation as an attempt to legitimize contentious RGC land grabs. The EWMI consultant has defended the MEF's work and questions whether NGOs should play a defining role in the draft process as they now demand. NGOs doubt RGC good intentions on land issues, attributing positive movement to cognizance of an upcoming Government-Donor coordination meeting and the run-up to the 2008 national elections. End summary.

#### THE LAW AND THE SUBDECREE

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¶2. (U) The Ministry of Economy and Finance (MEF) recently made available a ten-page draft law on expropriation that sets broad guidelines on land-taking procedures for public interest purposes and defines public interest activities. The law leaves specific land-taking procedures up to subdecrees but it lists fifteen types of activities considered in the public interest, such as construction of infrastructure projects, development of buildings for national protection and civil security, construction of facilities for research and exploitation of natural resources, and construction of oil pipeline and gas networks. One article of the law states compensation for dwellers of non-titled locations or on public land -- squatters -- will include payments for the cost of moving residence or damages but not for the cost of the land. According to an East-West Management Institute (EWMI) technical advisor, an expropriations law has been in the works since 2004 and this draft comes out of a drafting committee established in January 2006.

¶3. (U) The MEF appears to be more actively working on a 44-page draft subdecree, entitled "Sub Decree on Addressing Socio-Economic Impacts Caused by Development Projects," institutionalizing compensation procedures when the RGC expropriates land for purposes serving the general public or national interest. The Asian Development Bank (ADB) has been sponsoring a technical advisor, Patricia Baars, through the East-West Management Institute (EWMI) since June 2005 to assist the MEF in drafting the subdecree. Baars and the MEF organized an all-day national consultation workshop on May 21 for national- and local-level government officials to discuss the draft subdecree. Government participants included senior ministers, secretaries of state and other high-level

officials from nine ministries, and 22 provincial and district governors. A few, select NGOs were invited to attend the conference for their input and involvement in the discussion.

#### BUT NGOS LIKED THE OLD LAW

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14. (SBU) NGOs find it problematic that they and the public have not been a part of drafting either piece of legislation. Legal aid NGOs, such as the Community Legal Education Center (CLEC), fret that new legislation will codify current land acquisition practices that uproot what are already some of Cambodia's most vulnerable people. High-profile land grabbing cases involving RGC officials are unfortunately an increasing part of the human rights NGO caseload in Cambodia, so interest in any new legislation is to be expected. Currently, CLEC relies on the Land Law of 2001 to push for fair compensation packages for their disenfranchised clients who have been controversially removed from land. The 2001 law does provide compensation and some protections for citizens faced with evictions and losing land. The battle, NGOs say, has been enforcement and implementation of the law. Naly Pilorge, Director of local human rights NGO LICADHO, worries new legislation would override the existing land law pushing legal cases on behalf of poor, evicted residents back to square one.

#### NECESSITY OF COMPENSATION PROCEDURES

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15. (SBU) Baars told Poloff laws governing compensation procedures are necessary while the government continues to undertake development projects that require land acquisition and relocation of homes and businesses. Further, the MEF

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officials with whom she has been working have good intentions, claims Baars. She explained a section of the subdecree defining land use in the public and national interest that specifically excludes projects with purely economic development goals, including increasing tax revenues, creating employment, and general economic growth. If implemented, this article of the subdecree would be critical -- NGOs claim the RGC confiscates land in the name of public projects but the land is actually intended for private gain. She points out the new subdecree's definition of "public interest," standards for taking land from indigenous communities, and stipulations on affected residents "who have no legal rights to the land," are all based on the existing land law. Baars believes the draft subdecree compensation plan is so generous that the MEF's biggest problem will be finding the funds to ensure compensation meets the committed amounts. Despite NGO disagreement, she feels the drafting of this law is a good exercise for the officials involved. Baars maintains that the MEF has taken the subdecree seriously and she believes they have made a good-faith effort to write a fair law.

#### QUESTIONS RING ABOUT NGOS' ROLE IN THE PROCESS

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16. (SBU) Baars told Poloff she had always intended to include a two-week public comment period in the subdecree drafting process but that phase had been overcome by events. NGOs were blindsided when they heard about the subdecree three working days before the national consultation workshop, but eventually ADB and the MEF agreed to allow NGOs to participate. By the time Poloff met with ADB Senior Social Development and Resettlement Specialist Marla Huddleston and Baars mid-day on May 21, Huddleston was consumed with anger -- during morning sessions, NGO participants openly questioned the RGC's intent in drafting the subdecree. Huddleston angrily told poloff that NGOs were lucky to be involved in the draft subdecree process at all because the government usually does not include NGOs on other legislative

processes. (Note: Contrary to this statement, the RGC has opened public comment periods and accepted ideas from civil society on past legislation such as when the government included NGO suggestions in amendments to the existing election law prior to the 2003 elections. End note.) The NGOs and the MEF have now agreed to a three-phase public comment period: first, NGOs have until June 22 to submit comments on the draft subdecree; next, the MEF will have two to three weeks to take comments into consideration and will call a meeting with three to four representative NGOs to discuss (roughly July 8); finally, the NGOs will have until July 24 for any follow-on comments. Although they agreed to the calendar for comment, the NGOs then decided to boycott the afternoon sessions of the workshop. In a private meeting the following day, Baars told Poloff that government officials in attendance did not even notice the NGO boycott and that she suspects they also were unaware of the extent of NGOs' distress over the issue. She said she was unhappy about the long public comment period, which would never be so long in a U.S. law-drafting process. The NGO demands for a voice during the entire drafting process is unrealistic -- no government relinquishes its role in drafting laws to NGOs.

#### A POSITIVE TREND IN LAND DISPUTES?

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17. (SBU) Land grab cases throughout Cambodia are continuing with no apparent slowing in the number of cases recorded by NGOs. On a positive note, the Council of Ministers is forcing Suy Sophan (a powerful local businesswoman and alleged to be connected to Hun Sen's father) and her development company (Phanimex) to give up their disputed claim to land by the Royal Palace in Phnom Penh. The Council of Ministers ordered the Ministry of Interior to find Suy alternative land. The current draft of expropriation land legislation has the potential to be a sign of improvement, as well. However, Yeng Virak of CLEC believes the positive moves are just an attempt for CPP popularity gains before the 2008 elections. Naly Pilorge at LICADHO suggests the RGC wants to appease donors in advance of Government-Donor consultations in June.

18. (SBU) Comment. The MEF is generally viewed by NGOs and the international community to be one of the more competent ministries of the RGC. Despite this, NGOs we talked to are pessimistic about the impact the new legislation will have on land-grab cases. If NGOs can offer realistic, constructive input during the subdecree public comment period, the MEF's response to comments will be a good indication of their willingness to ensure a fair law for Cambodia's poor who are displaced by land grabs.

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19. (SBU) Comment continued. Regarding the negative NGO reaction to the draft legislation, the ADB has no one to blame but itself for the dilemma in which the Bank finds itself. The RGC went out of its way to court NGOs and the opposition, Sam Rainsy, in joining the still-moribund national Land Dispute Authority, as the government realized that NGO buy-in would be crucial to the Authority's success. That, and the strong NGO role in supporting victims of land cases should have made the ADB sensitive to the NGO community's likely reaction to an ongoing drafting process to which they were not privy. End comment.  
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